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8
9 IN THE UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,
12
13 Plaintiff,
14 v.
15 JOSHUA WAYNE THOMPSON,
Defendant.
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CASE NO. 2:19-CR-236 MCE

STIPULATION REGARDING USE OF
VIDEOCONFERENCING DURING CHANGE OF
PLEA HEARING; ORDER

DATE: September 3, 2020

TIME: 10:00 a.m.

COURT: Hon. Morrison C. England, Jr.

17 **BACKGROUND**

18 On December 19, 2020, a grand jury indicted defendant Joshua Wayne Thompson on one count
19 of felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1). A status conference in this
20 matter is scheduled for September 3, 2020. The parties have requested that hearing be converted to a
21 change of plea hearing.

22 On March 27, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security Act
23 (“CARES Act”). The CARES Act empowered the Judicial Conference of the United States and Chief
24 District Judges to authorize plea and sentencing hearings by video or telephonic conference when 1)
25 such hearings “cannot be conducted in person without seriously jeopardizing public health and safety;”
26 and 2) “the district judge in a particular case finds for specific reasons that the plea or sentencing in that
27 case cannot be further delayed without serious harm to the interests of justice.” *Id.*, Pub. L. 116-23
28 § 15002(b)(2).

1 On March 29, 2020, the Judicial Conference of the United States made the findings required by
2 the CARES Act, concluding that “emergency conditions due to the national emergency declared by the
3 President under the National Emergencies Act (50 U.S.C. § 1601, et seq.) with respect to the
4 Coronavirus Disease 2019 (COVID-19) have materially affected and will materially affect the
5 functioning of the federal courts generally.”

6 On June 29, 2020, the Chief Judge of this District, per General Order 620, also made the findings
7 required by the CARES Act: “[F]elony pleas under Rule 11 of the Federal Rules of Criminal Procedure
8 and felony sentencings under Rule 32 of the Federal Rules of Criminal Procedure cannot be conducted
9 in person without seriously jeopardizing public health and safety.” Accordingly, the findings of the
10 Judicial Conference and General Order 620 establish that plea and sentencing hearings cannot safely
11 take place in person.

12 In order to authorize change of plea hearings by remote means, however, the CARES Act—as
13 implemented by General Order 620—also requires district courts in individual cases to “find, for
14 specific reasons, that felony pleas or sentencings in those cases cannot be further delayed without
15 serious harm to the interests of justice.” General Order 620 further requires that the defendant consent to
16 remote proceedings. Finally, the remote proceeding must be conducted by videoconference unless
17 “videoconferencing is not reasonably available.” In such cases, district courts may conduct hearings by
18 teleconference.

19 The parties hereby stipulate and agree that each of the requirements of the CARES Act and
20 General Order 620 have been satisfied in this case. They request that the Court enter an order making
21 the specific findings required by the CARES Act and General Order 620. Specifically, for the reasons
22 further set forth below, the parties agree that:

23 1) The change of plea hearing in this case cannot be further delayed without serious harm to
24 the interest of justice, given the public health restrictions on physical contact and court closures existing
25 in the Eastern District of California, and given the defendant’s goal of moving the case toward
26 Judgement and Sentencing and the public’s interest in resolution of the case; and

27 2) The defendant waives his physical presence at the hearing and consents to remote hearing
28 by videoconference and counsel joins in that waiver.

STIPULATION

Plaintiff United States of America, by and through its counsel of record, and defendant, by and through defendant's counsel of record, hereby stipulate as follows:

1. The Governor of the State of California declared a Proclamation of a State of Emergency to exist in California on March 4, 2020.

2. On March 13, 2020, the President of the United States issued a proclamation declaring a National Emergency in response to the COVID-19 pandemic.

3. In their continuing guidance, the Centers for Disease Control and Prevention (CDC) and other public health authorities have suggested the public avoid social gatherings in groups of more than 10 people and practice physical distancing (within about six feet) between individuals to potentially slow the spread of COVID-19. The virus is thought to spread mainly from person-to-person contact, and no vaccine currently exists.

4. These social distancing guidelines—which are essential to combatting the virus—are generally not compatible with holding in-person court hearings.

5. On March 17, 2020, this Court issued General Order 611, noting the President's and Governor of California's emergency declarations and CDC guidance, and indicating that public health authorities within the Eastern District had taken measures to limit the size of gatherings and practice social distancing. The Order suspended all jury trials in the Eastern District of California scheduled to commence before May 1, 2020.

6. On March 18, 2020, General Order 612 issued. The Order closed each of the courthouses in the Eastern District of California to the public. It further authorized assigned district court judges to continue criminal matters after May 1, 2020, and excluded time under the Speedy Trial Act. General Order 612 incorporated General Order 611's findings regarding the health dangers posed by the pandemic.

7. On April 16, 2020, the Judicial Council of the Ninth Circuit declared a judicial emergency in this District pursuant to 18 U.S.C. § 3174(d), based on the District's "critically low resources across its heavy caseload." The report accompanying the Judicial Council's declaration

1 analyzed the public safety dangers associated with the COVID-19 pandemic and examined both the
2 District's caseload (the District currently ranks first in the Ninth Circuit and eighth nationally in
3 weighted filings) and its shortage of judicial resources (the District is currently authorized only six
4 district judges; two of those positions are currently vacant and without nominations). The report further
5 explained that a backlog of cases exists that "can only start to be alleviated" when the CDC lifts its
6 guidance regarding gatherings of individuals.

7 8. On April 17, 2020, General Order 617 issued, continuing court closures through June 1,
8 2020, and authorizing further continuances of hearings and exclusions under the Speedy Trial Act.

9 9. On May 13, 2020, General Order 618 issued, continuing court closures until further
10 notice and authorizing further continuances of hearings and exclusions under the Speedy Trial Act.

11 10. Given these facts, it is essential that Judges in this District resolve as many matters as
12 possible via videoconference and teleconference during the COVID-19 pandemic. By holding these
13 hearings now, this District will be in a better position to work through the backlog of criminal and civil
14 matters once in-person hearings resume.

15 11. The change of plea hearing in this case accordingly cannot be further delayed without
16 serious harm to the interests of justice. If the Court were to delay this hearing until it can be held in-
17 person, it would prevent Mr. Thompson from resolving this case by guilty plea and proceeding toward
18 Judgment and Sentencing, and it would deny the public its interest in speedy resolution of the matter

19 12. Under CARES Act § 15002(b), defendant consents to proceed with this hearing by video-
20 teleconference. Counsel joins in this consent.

21 IT IS SO STIPULATED.

22
23 Dated: August 28, 2020

McGREGOR W. SCOTT
United States Attorney

24
25 /s/ MATTHEW THUESEN
MATTHEW THUESEN
26 Assistant United States Attorney
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1 Dated: August 28, 2020

/s/ HANNAH LABAREE

HANNAH LABAREE

Counsel for Defendant

Joshua Wayne Thompson

3 **ORDER**

4 1. The Court adopts the findings above.

5 2. Further, the Court specifically finds that:

6 a) The change of plea hearing in this case cannot be further delayed without serious
7 harm to the interest of justice; and

8 b) The defendant has waived his physical presence at the hearing and consents to
9 remote hearing by videoconference.

10 3. Therefore, based on the findings above, and under the Court's authority under § 15002(b)
11 of the CARES Act and General Order 620, the change of plea hearing in this case will be conducted by
12 videoconference.

13 IT IS SO ORDERED.

14 Dated: August 31, 2020

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16 MORRISON C. ENGLAND, JR.
17 SENIOR UNITED STATES DISTRICT JUDGE
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